

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ERIGHT JOHNSON,	§	
Plaintiff,	§	
	§	CIVIL ACTION NO.
vs.	§	
	§	COMPLAINT
I.C. SYSTEM, INC.,	§	Jury Trial Demanded
Defendant.	§	

NATURE OF ACTION

1. Plaintiff Eright Johnson (“Plaintiff”) brings this action against Defendant I.C. System, Inc. (“Defendant”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

4. “In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016). Congress is “well positioned to identify intangible harms that meet minimum Article III requirements,” thus “Congress may ‘elevat[e] to the status of legally cognizable injuries

concrete, *de facto* injuries that were previously inadequate in law.” *Id.* (quoting *Lujan v. Defs of Wildlife*, 504 U.S. 555, 578 (1992)).

5. “Without the protections of the FDCPA, Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.’” *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467, at *3 (N.D. Ill. July 11, 2016) (quoting 15 U.S.C. § 1692(b)). Thus, a failure to honor a consumer’s right under the FDCPA constitutes an injury in fact for Article III standing. *See Id.* at *3 (holding that a consumer “has alleged a sufficiently concrete injury because he alleges that [Defendant] denied him the right to information due to him under the FDCPA.”); *see also Church v. Accretive Health, Inc.*, No. 15-15708, 2016 WL 3611543, at *3 (11th Cir. July 6, 2016) (holding that consumer’s § 1692g claim was sufficiently concrete to satisfy injury-in-fact requirement).

6. “[E]ven though actual monetary harm is a sufficient condition to show concrete harm, it is *not* a necessary condition.” *Lane*, 2016 WL 3671467 at *4 (emphasis in original).

THE FAIR DEBT COLLECTION PRACTICES ACT

7. Congress enacted the FDCPA to “eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010) (citing 15 U.S.C. § 1692(e)).

8. “[T]he FDCPA is a strict liability statute—collector ‘need not be deliberate, reckless, or even negligent to trigger liability’” *Walker v. Pharia, LLC*, No. 4:09-CV-369-Y, 2010 WL 565654, at *3 (N.D. Tex. Feb. 18, 2010) (quoting *Ross v. RJM Acquisitions Runding LLC*, 480 F.3d 493, 495 (7th Cir.2007)).

9. “To determine whether a particular collection practice violates the FDPCA, the Court ‘must evaluate any potential deception in the letter under an unsophisticated or least sophisticated consumer standard.’” *Castro v. Collecto, Inc.*, 668 F. Supp. 2d 950, 959 (W.D. Tex. 2009) (citing *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009)).

10. “The Fifth Circuit has explained the unsophisticated or least sophisticated consumer standard is meant to protect all consumers from abusive or deceptive collection practices and to protect debt collectors from consumers who misinterpret collection materials.” *Id.* at 959-60.

PARTIES

11. Plaintiff is a natural person who at all relevant times resided in the State of Texas, County of Fort Bend, and City of Sugar Land.

12. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

13. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

14. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

15. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be owed or due a creditor other than Defendant.

16. Plaintiff's alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, a consumer utility account (the “Debt”) with Direct Energy.

17. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

18. In connection with the collection of the Debt, Defendant telephoned Plaintiff on or about April 10, 2017.

19. Defendant informed Plaintiff that he owed the Creditor a balance of \$341 for utilities incurred in early 2015 at an address located on Cook Road in Houston, Texas.

20. Defendant further informed Plaintiff that the utility account had been set up in February of 2015 and then closed the following month.

21. Plaintiff informed Defendant that he does not owe the Debt because he has lived at the same address for the past 22 years and has no ties to any addresses located on Cook Road in Houston, Texas.

22. Plaintiff then requested that Defendant mail information about the Debt to his current address.

23. In connection with the collection of the Debt, Defendant sent Plaintiff a letter dated April 11, 2017.

24. A true and correct copy of Defendant's April 11, 2017 letter is attached to this complaint as Exhibit A.

25. Defendant's April 11, 2017 letter was contained in an envelope addressed to "Erigh Johnson Fraud Alert" and stated: "We will request that the national credit reporting agencies remove the account information from your credit record. You may wish to check with your local credit bureau to ensure that your credit file has been corrected." Exhibit A.

26. Based off this language, Plaintiff, or the least sophisticated, may reasonably believe that the Debt may have been incurred in his name fraudulently and that Defendant is no longer collecting the Debt from Plaintiff.

27. However, the following paragraph stated: "Please tear off the bottom portion of this letter and **return it with your payment.**" *Id.* (emphasis added).

28. Defendant then provided the notices required in an initial communication by 15 U.S.C. § 1692g(a) at the bottom of its April 11, 2017 letter.

29. Plaintiff, or the least sophisticated consumer, would be confused or misled as to whether Defendant's April 11, 2017 letter is or is not collecting the Debt from Plaintiff.

COUNT I
VIOLATION OF 15 U.S.C. § 1692e

30. Plaintiff repeats and re-alleges each factual allegation contained above.

31. The FDCPA creates a broad, flexible prohibition against the use of misleading, deceptive, or false representations in the collection of debts. *See* 15 U.S.C. § 1692e. *See Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir. 2002) (citing legislative history reference to the FDCPA’s general prohibitions which “will enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed”).

32. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of any debt, specifically by sending its April 11, 2017 letter which caused Plaintiff to be confused as to whether Defendant was or was not attempting to collect the Debt from him.

33. Defendant also violated 15 U.S.C. § 1692e by sending the April 11, 2017 letter in an envelope addressed to “Erigh Johnson Fraud Alert” which would also confuse Plaintiff as to whether Defendant was or was not attempting to collect the Debt from him.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e;
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff reasonable attorneys’ fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692e(2)(A)

34. Plaintiff repeats and re-alleges each factual allegation contained above.

35. Included as an example of conduct that violates section 1692e is the false representation of the character, amount, or legal status of a debt. 15 U.S.C. § 1692e(2)(A).

36. Thus, the plain-language of the FDCPA makes it clear that under the strict liability framework, any false representation as to the amount of the debt is sufficient to show a violation of the FDCPA. *See Randolph v. IMBS, Inc.*, 368 F.3d 726, 730 (7th Cir. 2004) (“§ 1692e(2)(A) creates a strict-liability rule. Debt collectors may not make false claims, period.”); *see also Turner v. J.V.D.B. & Associates, Inc.*, 330 F.3d 991, 995 (7th Cir. 2003) (“under § 1692e ignorance is no excuse”).

37. Defendant violated 1692e(2)(A) by falsely representing the character, amount, or legal status of Plaintiff’s alleged Debt.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(2)(A);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper.

**COUNT III
VIOLATION OF 15 U.S.C. § 1692e(10)**

38. Plaintiff repeats and re-alleges each factual allegation contained above.

39. Congress, recognizing that it would be impossible to foresee every type of deceptive collection misbehavior, expressly included in the FDCPA a catchall provision, prohibiting "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. § 1692e(10).

40. The FTC has stated that: "It is a violation [of § 1692e(10)] to send any communication that conveys to the consumer a false sense of urgency." Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097-50110 (Dec. 13, 1988).

41. Defendant violated 15 U.S.C. 1692e(10) by using false, deceptive, or misleading representations or means in connection with the collection of any debt, specifically by sending its April 11, 2017 letter which caused Plaintiff to be confused as to whether Defendant was or was not attempting to collect the Debt from him.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(10);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper.

TRIAL BY JURY

42. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: September 29, 2017

Respectfully submitted,

/s/ Russell S. Thompson IV

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